

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CORNELIUS LOPES,

Plaintiff,

No. C 07-6213 PJH

v.

ORDER

FREMONT FREEWHEELERS, et al.,

Defendants.

On July 9, 2008, the court heard argument in six motions to dismiss filed by various defendants in the above-entitled action. During the course of the argument, counsel for two of the defendants – USA Cycling and Linda Buffetti – stated,

At the trial last year in the civil proceeding against USA Cycling and a number of the bicyclists, Mr. Lopes at that time attempted to raise on a motion at trial this civil conspiracy argument, and at that trial we opposed that. So getting, once again, to the issue of res judicata, he had the opportunity to raise the issue of a civil conspiracy that the bicyclists and USA Cycling participated in a conspiracy to bring criminal charges against him. The judge rejected that and, in fact, instructed and ruled that citizens should be encouraged to cooperate with the authorities investigating actions such as this. So in terms of the res judicata defense, it applies to this argument, once again.

In response, plaintiff asserted, "It was never raised before the court."

This specific argument by USA Cycling and Linda Buffetti was not previously raised in their motion to dismiss, nor was it raised by the Fremont Freewheelers defendants in their motions to dismiss, although Fremont Freewheelers sought dismissal generally on res judicata grounds based on plaintiff's previous state court action against the bicyclists.

Counsel for defendants USA Cycling and Linda Buffetti is hereby directed to provide a declaration attaching a copy of either the relevant portions of the trial transcript, reflecting

1 plaintiff's motion and the court's ruling (or a copy of plaintiff's motion, if he filed one; and a
2 copy of the court's order, if one was issued). The declaration shall be filed as soon as
3 possible, but in any event no later than July 23, 2008.

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5 **IT IS SO ORDERED.**

6 Dated: July 11, 2008



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PHYLLIS J. HAMILTON
United States District Judge